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The Case for EPA Action

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On April 1 the Environmental Protection Agency established rules restricting greenhouse gas emissions from cars and trucks, starting in 2012. This is the first of what could become a sweeping series of regulations stemming from the agency's conclusion that greenhouse gases harm human health. If the EPA were to act robustly, it could achieve significant and immediate greenhouse gas emissions reductions using nothing more than existing laws and current technology. Doing so would signal to a waiting world that America is serious about addressing climate change.

But a dangerous assault on the agency is gathering momentum in Congress, corporate boardrooms, the media and the courts. The swarm of counterattacks all seek to strip the EPA of its power to regulate greenhouse gas emissions from stationary sources like coal-fired power plants. Some legislative proposals would even undo the EPA's finding that greenhouse gases are hazardous, taking the EPA out of the climate fight altogether.

Wonkish at first glance, the fight over EPA rulemaking may be the most important environmental battle in a generation. The UN's Intergovernmental Panel on Climate Change says rich countries like the United States must cut emissions 25 to 40 percent below 1990 levels by 2020--only ten years away--and thereafter make precipitous cuts to almost zero emissions. If we don't act now, average global temperatures will likely increase by more than 2 degrees Celsius and trigger self-compounding runaway climate change, resulting in a massive rise in sea levels, devastated agriculture and attendant social chaos. Not one of the climate change bills up for discussion meets this threshold, and it is looking increasingly unlikely that Congress will be able to pass any comprehensive climate change legislation this session. The failures of Congress and the harrowing facts of climate science mean that aggressive and immediate EPA action is essential.

From a legal perspective, the EPA has all the tools it needs to respond adequately to the climate crisis. In fact, "the United States has the strongest environmental laws in the world," says Kassie Siegel, an attorney with the Center for Biological Diversity. The center specializes in suing the government when it violates green laws. "We don't need new legislation. The Clean Air Act can achieve everything we need: a 40 percent reduction of greenhouse gas emissions over 1990 levels by 2020."

The two most important things the EPA can do are to halt any permitting of new coal-fired power plants--about fifty new plants are seeking approval--and to force all existing coal-fired facilities to make the technologically feasible switch to natural gas. If this "fuel switching" happened, total nonvehicle US emissions would be reduced by 13 percent or more in a matter of a year or two, say various experts. Natural gas is generally half as polluting as coal. But in the case of old, inefficient coal-fired plants, switching to gas can reduce emissions by as much as two-thirds.

And there is plenty of natural gas: discoveries have glutted the market, and prices are down more than 60 percent from their recent peak. Gas is not a solution; it merely offers a realistic "bridging fuel" as we move toward power generated from wind, solar, geothermal and hydro sources.

Perhaps the most far-reaching impact of EPA regulation would be to put a de facto price on carbon by leveling fines on greenhouse gas polluters. Such penalties could reach thousands per day, per violation. If targets for emissions reductions are tough enough, few coal plants will be able to meet them and will instead pay fines--what amounts to a carbon tax. Then a cheap source of energy would become expensive, which would drive investment away from fossil fuels toward carbon-neutral forms of energy.

At first, President Obama seemed ready to use executive power to do an end run around a sclerotic Congress, when he authorized the EPA to start regulating greenhouse gas emissions under the Clean Air Act. Obama was merely complying with the law: the EPA has been mandated to act since 2007, when the Supreme Court ruled, in *Massachusetts v. EPA*, that the agency should determine whether greenhouse gases threaten our health. The Bush administration refused to use this authority, but when Obama took office he allowed the EPA to do its job again.

This past December the EPA published a science-based "endangerment finding," which found that CO₂ and five other greenhouse gases are, in fact, dangerous to human life. Once the EPA issues an endangerment finding, it is legally bound to promulgate regulations to



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address the problem; the first of these were the vehicle emissions reductions announced on April 1.

Now the EPA is following up by drafting regulations for stationary greenhouse gas sources. Called a tailoring rule, it will stipulate when, where and how greenhouse gas pollution must be controlled. At first the agency said it would regulate facilities emitting 25,000 tons or more of greenhouse gases per year. But pressure from fossil fuel industries and Congress has caused the EPA to backpedal to a threshold of 75,000 tons per year, a limit the EPA could raise to 100,000 tons by the time its tailoring rule is finalized.

In February, Senator Jay Rockefeller of West Virginia sent a letter urging EPA administrator Lisa Jackson to delay the implementation of greenhouse gas point source review. Signing on with Rockefeller were seven other Democratic senators, all but one from the nation's top coal-producing states. In response, Jackson pushed back any new regulations until 2011--conveniently after this fall's midterm election. Rockefeller wasn't satisfied and has since introduced legislation seeking to suspend EPA action until after 2012.

Because the tailoring rule is not yet final, the whole issue of stationary source regulation could get put off indefinitely, or be pre-empted by climate change legislation that strips the EPA of its regulatory powers.

The fight over the EPA's role goes back to 1997, when President Clinton signed, but could not get the Senate to ratify, the Kyoto Protocol. Searching for a way around the Senate's blockade, Clinton's EPA administrator, Carol Browner--now director of the White House Office of Energy and Climate Change Policy--took the position that the EPA was already authorized to regulate greenhouse gas emissions under the 1970 Clean Air Act. Soon a coalition of green groups, including Greenpeace and the Center for Biological Diversity, petitioned the EPA to start taking action.

The specter of muscular regulations from the EPA caused near-panic among major polluters. In late 1999 the American Petroleum Institute, the trade association of the oil and gas industry, called a meeting of major industrial corporations; twenty-eight executives attended, representing the National Association of Manufacturers and the Chamber of Commerce, as well as the aluminum, airline, chemical, electrical power, aerospace, cement, fertilizer, coal and oil industries. The leaked minutes of that meeting revealed a plan to spin the issue of EPA regulation in the media, to fight it in the courts and push legislation that would strip the EPA of regulatory power. The executives also agreed to pressure the EPA directly to reject the petition filed by the green groups.

The plan worked; Browner backed off. Then the Bush administration stacked the EPA's ranks with fossil fuel-loving loyalists. When climate change regulation again became an issue in 2009, the industry's counterattack was already in place. Thus, both the House climate bill (Waxman-Markey, which passed in June 2009) and the Senate bill (Kerry-Lieberman-Graham, still under consideration) contain language restricting the EPA's power to control greenhouse gas pollution from stationary sources.

Now even more toxic legislation is gathering support. Republican Senator Lisa Murkowski of Alaska--aided by corporate lobbyists like Jeffrey Holmstead, formerly with the Bush EPA and now head of environmental strategies for the lobbying firm Bracewell & Giuliani, and Roger Martella Jr., a partner at Sidley Austin--has written a resolution that would overturn the EPA's original greenhouse gas endangerment finding.

Alaska is a big oil, gas and coal producer, and Murkowski is one of the top recipients of petroleum industry campaign donations. So far this year she has received \$188,000; only two senators, Democrat Blanche Lincoln and Republican David Vitter, have received more oil and gas money than Murkowski.

Murkowski's resolution was introduced January 21 under the little-used Congressional Review Act, which means it needs only fifty-one votes to pass and cannot be blocked from a vote by Senate majority leader Harry Reid. Although it is called a "resolution of disapproval," it would have the force of law. So far forty other senators are on board, including three Democrats--Mary Landrieu of Louisiana, Blanche Lincoln of Arkansas and Ben Nelson of Nebraska.

In the House, Joe Barton, a Republican from Texas, has written a companion resolution of disapproval. Not surprisingly, Barton is tight with polluters; over the past two decades he has received more than \$2.7 million in direct campaign contributions from electrical utilities and the petroleum industry.

Obama would, by all accounts, veto the Murkowski or Barton bill. But their point is not so much to gut the EPA in Congress as it is to intimidate, delay, confuse and blunt into irrelevance any EPA action. Other pushbacks are taking the form of lawsuits and petitions from the Chamber of Commerce, the National Association of Manufacturers and fossil fuel lobbies. Fifteen states have filed suits seeking to block the EPA's endangerment ruling, and at least seventeen state legislatures have seen bills introduced to strip EPA powers. None of these efforts are likely to achieve their stated goals, but they are all part of a right-wing and corporate strategy to send a message to Obama and the Senate, where real EPA-stripping could happen if Kerry-Lieberman-Graham passes.

Behind much of this state-level pressure is money from Charles and David Koch, petroleum magnates who are increasingly notorious for funding far-right ventures such as FreedomWorks, a tea party organizer, and think tanks that traffic in climate-change denial. One of their organizations, Americans for Prosperity, is running a Regulation Reality Tour, which is trying to whip up outrage about the "EPA's power grab." Part of this Astroturf campaign involves political theater: fake "carbon cops" in little green Smart cars with flashing lights pull out badges and issue citations for carbon "crimes" like mowing a lawn.

But green groups are organized to fight back and are having some success, as witnessed by the EPA's recently issued regulations under the Clean Water Act, which will sharply curtail mountaintop removal [see Eshelman, page 17]. Unfortunately, many big environmental groups in Washington have not made defending the EPA a priority. Most endorsed Waxman-Markey, and in late March twenty of the biggest

groups came out in support of the still-unpublished Kerry-Lieberman-Graham bill. Those groups included the Alliance for Climate Protection, Environment America, the League of Conservation Voters, Environmental Defense Fund, National Wildlife Federation, Blue Green Alliance, Natural Resources Defense Council, Center for American Progress Action Fund and Union of Concerned Scientists. The Sierra Club has switched to defending the EPA and opposing any climate change bill that strips the agency of its power; other environmental groups may soon follow.

So where is the Obama administration? The president says he prefers climate legislation to EPA regulation. That is an unnecessary concession; Obama does not need to wait for Congress. In this situation, American politics is not hostage to an obstructionist right-wing fringe or the lack of a sixty-vote supermajority. Existing laws allow--even require--broad and robust action.

Throughout American history the executive branch has steadily been accruing power. Before the 1930s presidents rarely proposed legislation. Even LBJ worried that his phone calls to lobby senators could violate the "separation of powers doctrine." Nixon created the EPA in 1970 precisely to concentrate more power in the hands of the executive. He gathered up all the existing environmental programs, gave them no extra money and put them in one agency, which answered to a director appointed by the president. The Bush administration practically searched the vest pockets of bureaucrats to find ways (often illegal) to enhance presidential prerogatives.

And the current president?

"Obama, like Bush before him, is happy to assert unlimited executive authority when it comes to the war on terror, detention without trial, warrantless wiretapping," says Brendan Cummings, senior counsel at the Center for Biological Diversity. "But when it comes to addressing global warming, he refuses to use his clear and lawful executive power to reduce greenhouse pollution to protect people and the planet."

"Heading into an election, I think, the administration is very leery of offending powerful corporate interests," says Tyson Slocum of Public Citizen. "That is especially true when those corporate interests make campaign expenditures in swing states."

Other greens agree. "At stake in the fight over the EPA's ability to address global warming pollution is not only the president's environmental record but really the core promise of his presidency, to change the way Washington works," says Kert Davies, director of research at Greenpeace USA. "The year behind us on energy and climate policy shows what you get when the Obama administration's seeming compulsion for compromise meets the entrenched power of the coal, oil and nuclear industries."

Tragically, climate change is not an issue where compromise will work. Bad healthcare bills can be improved; but on the climate front, time has run out. Atmospheric CO2 concentrations are at 390 parts per million and need to go back to 350 ppm. Already, oyster farms in the Pacific Northwest are in decline because of ocean acidification caused by climate change. Last year many Midwestern crops were too rain-soaked to harvest. Drought, likely linked to climate change, is battering much of Latin America, Africa and Asia. Everywhere signs of nature's unraveling are evident.

Allowing Congress to strip the EPA of its review powers or letting the administration dither away its responsibility to act boldly would be a disaster. The EPA is our last, best hope.

About Christian Parenti

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